



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2004

Mr. Dennis Eichelbaum
General Counsel
7400 Gaylord Pkwy, Ste. 200
Frisco, Texas 75034

OR2004-6595

Dear Mr. Eichelbaum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206627.

The Mount Vernon Independent School District (the "district"), which you represent, received a request for a copy of all bills for legal services for the past year that have been billed to the district. The requestor also seeks "an amount that has been paid to [the district] in this school year by the current school photographer. Please note what each amount is for." You inform us that the district is releasing to the requestor copies of the fee bills for which it has no objection. You claim, however, that portions of the submitted fee bills that you have marked are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we note that you have not submitted for our review any information responsive to the request for the amounts paid by the school photographer, nor do you indicate that any such information has been released to the requestor. Therefore, if such information existed on the date the district received the request, you must immediately release such information to the requestor if you have not already done so. *See* Gov't Code §§ 552.006, .301(a), .302.

Next, we note that the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). The submitted information consists of attorney fee bills of the law firm representing the district that are subject to section 552.022(a)(16). You do not claim that this information is confidential under the attorney-client privilege, but you assert that the submitted information is excepted under section 552.103. Section 552.103 is a discretionary exception under the Public Information Act (the "Act"). Discretionary exceptions under the Act are intended to protect only the interests of the governmental body, as distinct from exceptions that are intended to protect information deemed confidential by law or the interests of third parties; therefore, discretionary exceptions do not constitute "other law" that makes information confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, section 552.103, even if applicable to the submitted information, is not "other law" that makes information confidential for purposes of section 552.022. Therefore, the submitted information is not excepted under section 552.103 and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Michael A. Pearle". The signature is written in a cursive, flowing style.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 206627

Enc. Submitted documents

c: Mr. Ron Barker
Box 821
Mr. Vernon, Texas
(w/o enclosures)